

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: TERRORIST ATTACKS OF
SEPTEMBER 11, 2001

03 MDL 1570 (GBD)

New York, N.Y.
March 23, 2017
3:10 p.m.

Before:

HON. SARAH NETBURN,

Magistrate Judge

APPEARANCES

KREINDLER & KREINDLER LLP
Attorneys for Ashton Plaintiffs
BY: JAMES P. KREINDLER
ANDREW J. MALONEY

COZEN O'CONNOR
Attorneys for Federal Insurance Plaintiffs
BY: SEAN P. CARTER

MOTLEY RICE LLC
Attorneys for Burnett Plaintiffs
BY: JODI WESTBROOK FLOWERS

ANDERSON KILL
Attorneys for O'Neill Plaintiffs
BY: JERRY S. GOLDMAN

NAPOLI SHKOLNIK PLLC
Attorneys for Addesso Plaintiffs
BY: PAUL J. NAPOLI
CHRISTOPHER R. LOPALO

APPEARANCES (cont'd)

WIGGINS CHILDS PANTAZIS FISHER GOLDFARB`
Attorneys for Homer Plaintiffs

BY: DENNIS G. PANTAZIS
TIMOTHY B. FLEMING

-and-

FOOTE MIELKE CHAVEZ & O'NEIL, LLC

BY: ROBERT M. FOOTE

MOTLEY RICE LLC

Attorneys for Burnett Plaintiffs and Eurobroker

BY: ROBERT T. HAEFELE

-and-

SIMMONS HANLY CONROY

BY: JAYNE CONROY

ALLAN C. SAMUELS

Attorneys for Plaintiffs Antoinette McCarthy
and Jennifer Castellano

BY: MICHAEL F. GROSSMAN, of counsel

THE MILLER FIRM LLC

Attorneys for DeSimone Plaintiffs

BY: DAVID J. DICKENS

SALERNO & ROTHSTEIN

Attorneys for Defendant Yassin Abdullah Al Kadi

BY: PETER C. SALERNO

OMAR T. MOHAMMEDI

Attorney for Defendant WAMY International, Inc.

CLIFFORD CHANCE US LLP

Attorneys for Defendant Dubai Islamic Bank

BY: STEVEN T. COTTREAU

KELLOGG HUBER HANSEN TODD EVANS & FIGEL, P.L.L.C.

Attorneys for Defendant Kingdom of Saudi Arabia

BY: MICHAEL K. KELLOGG

ROBBINS RUSSELL ENGLERT ORSECK UNTEREINER & SAUBER LLP

Attorneys for Defendant Saudi High Commission

BY: ROY T. ENGLERT, JR.

APPEARANCES (cont'd)

MOLO LAMKEN

Attorneys for Defendant Dallah Avco Trans Arabia Co. LTD.

BY: ROBERT K. KRY

LEWIS BAACH PLLC

Attorneys for Defendants The International Islamic Relief
Organization and The Muslim World League

BY: WALEED NASSAR

1 (Case called)

2 MR. KREINDLER: Good afternoon, your Honor, Jim
3 Kreindler for the Ashton plaintiffs, and I'm one of the
4 cochairs of the Plaintiffs' Executive Committee.

5 MS. FLOWERS: Jodi Flowers on behalf of the Burnett
6 plaintiffs and the Plaintiffs' Executive Committee.

7 MR. CARTER: Good afternoon, your Honor, Sean Carter
8 on behalf of the Federal Insurance plaintiffs and the
9 Plaintiffs' Executive Committee.

10 MR. GOLDMAN: Good afternoon, your Honor Jerry Goldman
11 on behalf of the O'Neill plaintiffs and the Plaintiffs'
12 Executive Committee.

13 MR. COTTREAU: Good afternoon, your Honor, Steve
14 Cottreau for Dubai Islamic Bank.

15 MR. KELLOGG: Good afternoon, your, Michael Kellogg on
16 behalf of the Kingdom of Saudi Arabia.

17 MR. ENGLERT: Good afternoon, your Honor, Roy Englert
18 for the Saudi High Commission.

19 THE COURT: Thank you.

20 I understand that there are some other counsel in the
21 room who may wish to be heard. For anybody else who has not
22 made an appearance, if you do wish to be heard, that's fine. I
23 would just ask that you identify yourself both by your name and
24 by the case that you're working on.

25 The purpose of today's conference is to touch base on

1 where we find ourselves. As you know, I issued a status
2 conference order on the 17th that identified four areas for
3 discussion. So what I thought I would do was just remind
4 everybody about what I want to talk about, and then we can
5 proceed from there.

6 I'd like to begin by discussing the new cases that
7 have been filed against Saudi Arabia. As recently as moments
8 ago another case has been filed, the Homer case. In addition
9 to the consolidated amended complaint, we have the Ashton
10 complaint, we have four complaints filed by the same counsel.
11 The lead case is I think Aguilar.

12 There are a series of cases that were filed that were
13 identified in my conference order. I want to talk about those
14 new cases and get my hands around that issue. Related to the
15 new cases I want to talk about the role of the Plaintiffs'
16 Executive Committee and make sure that everything is working as
17 it needs to be for that purpose and as we fold in these new
18 cases.

19 I want to discuss the anticipated motion to dismiss
20 brought by Saudi Arabia and how that will be affected. I know
21 we had a June 1 date to move to dismiss the consolidated
22 amended complaint, but we now have additional complaints that
23 are coming in and how we are going to handle those complaints.

24 And then I thought I would just conclude by touching
25 base on discovery in the earlier filed cases and see where

1 things stand with that.

2 Why don't we begin and maybe I will ask Mr. Kellogg to
3 begin. And we can just talk about where things stand from your
4 perspective with respect to the complaints that are filed
5 against Saudi Arabia.

6 MR. KELLOGG: Thank you, your Honor.

7 As you know, there have been many letters and orders
8 back and forth since the time of the remand and even preceding
9 the remand, all of which were endorsed by the Plaintiffs'
10 Executive Committee and assumed that there was going to be one
11 consolidated complaint by the various plaintiffs' groups
12 represented by the Plaintiffs' Executive Committee. There was
13 no suggestion that there was going to be a separate complaint
14 that was filed after the deadline that this Court established
15 for serving on us the consolidated amended complaint.

16 THE COURT: Can I interrupt you for one legal
17 question, which a statute of limitations question. I am just
18 trying to get a sense of, for how long is the possible window
19 that cases against Saudi Arabia might be filed? Do you have an
20 answer? I assume that's going to be one of your motion issues.

21 MR. KELLOGG: I believe, your Honor, that Congress
22 extended the statute of limitations to 2019, so there could
23 potentially be more cases filed.

24 But our goal in dealing with the remand was to have a
25 single consolidated complaint, that we would file a single

consolidated motion to dismiss against we, the Kingdom. The Saudi High Commission would file its own motions to dismiss. That was a goal that we shared, we thought, by the Plaintiffs' Executive Committee and endorsed by this Court.

All the orders talked about a single pleading, a single complaint, and a complaint by all the plaintiffs. The goal has been disrupted now because the Ashton plaintiffs have filed the complaint that is quite a bit different from the consolidated amended complaint. It contains different allegations. And that's distinct from the other complaints, new complaints which the Court has rightly indicated are tagalong actions that are really just embracing the consolidated amended complaint.

THE COURT: Have you looked at the Homer complaint or the Aguilar complaint? The Homer one was the one I just noticed was filed maybe a couple of hours ago.

MR. KELLOGG: It was filed while I was walking to the courthouse today, your Honor. I have not looked at it. I am told that it's mainly a cut and paste. As long as they are tagalong, it doesn't make that much difference to our objective of having a single organized proceeding.

But the Ashton complaint really does, and it's out of time. It was supposed to be served on us March 1, a single consolidated complaint, all through the letter exchange and the letters were signed by the Plaintiffs' Executive Committee of

1 which counsel for Ashton plaintiffs is a member. There was no
2 hint, no suggestion that we were going to get a separate
3 complaint out of the blue, and we were proceeding in good
4 faith.

5 We agreed to waive service on all the new complaints.
6 We decided not to file an opposition to the motions to amend
7 because we were going to have this nice package and we were
8 going to respond to it on June 1. That has been undermined by
9 Mr. Kreindler.

10 And the reason he says he can do this is because the
11 Court's orders requiring the consolidated amended complaint
12 only apply to those who had already sued Saudi Arabia. And
13 that's doubly wrong. First of all, the orders talked about all
14 plaintiffs. The Plaintiffs' Executive Committee was
15 representing all the plaintiffs who were covered under the
16 umbrella of the Plaintiffs' Executive Committee. The Ashton
17 plaintiffs did sue Saudi Arabia back in 2014. They were part
18 of the consolidated amended complaint which was filed in 2014
19 and denied by Judge Daniels. They were part of the appeal that
20 went to the Second Circuit. They were part of the remand and
21 they were on all of the letters. And our position is that it
22 is simply too late for them to come in with significantly
23 different allegations that we are now going to have to try to
24 deal with in the motion to dismiss.

25 THE COURT: I'll ask Mr. Kreindler to tell me his view

1 on this. I confess that I have not compared the consolidated
2 amended complaint to the Ashton complaint, so forgive me for my
3 ignorance. The grounds on which Saudi Arabia is going to move,
4 presumably, since it will be a motion to dismiss, will be legal
5 grounds. Can you explain to me, if you are able to, why the
6 motion that you would file against the consolidated amended
7 complaint would not be equally applicable to the Ashton
8 complaint?

9 MR. KELLOGG: Well, because they have added a number
10 of different specific allegations and so we will have to
11 respond separately to those, presumably in a separate motion to
12 dismiss against that complaint, which will complicate the
13 process.

14 First of all, we have to go through the very long
15 consolidated amended complaint, compare it against the
16 complaint we just got this week, and figure out which
17 allegations are significantly different that are going to
18 require a separate response. We have identified dozens,
19 already, of specific allegations that are not contained in the
20 consolidated amended complaint.

21 THE COURT: What relief would you be seeking from the
22 Court? Set aside the fact that you might have assumed that the
23 Ashton claims have been brought in the consolidated amended
24 complaint and maybe there was a miscommunication or maybe it
25 was something worse than that. What's the remedy at this

1 point?

2 MR. KELLOGG: One remedy which we would ask is to
3 simply dismiss the Ashton complaint as untimely and allow them
4 to join in the consolidated amended complaint. I would note
5 that many, if not most, of the Ashton plaintiffs are already
6 part of the consolidated amended complaint insofar as they are
7 members of the putative O'Neill class, which is on the
8 consolidated amended complaint.

9 If they think that there are additional allegations
10 that the consolidated amended complaint did not cover and that
11 are critical to the case, then we can have yet another revised
12 amended consolidated complaint that puts them all in one place
13 or they can perhaps do an addendum to the existing consolidated
14 amended complaint and we will set a new schedule for responding
15 to that.

16 THE COURT: Thank you.

17 I have questions for you about some of the other
18 complaints, but maybe it makes sense for me to speak with
19 Mr. Kreindler about the Ashton complaint and finish this topic.

20 MR. KREINDLER: Thank you, your Honor. Let me address
21 your first three topics: The Plaintiffs' Executive Committee,
22 the Ashton complaint, and how our committee intends to handle
23 additional lawsuits which could be filed until 2019.

24 THE COURT: I am going to stop you because I want to
25 focus on Ashton right now because that's what we were talking

1 about.

2 MR. KREINDLER: Here is the situation on the Ashton
3 complaint. Our committee had the same understanding and we
4 have been on the same page from the beginning here. The Ashton
5 plaintiffs -- and we represent the family members of 850 people
6 who were killed and 1,500 injury cases -- have never sued Saudi
7 Arabia. We have not been part of any complaint against Saudi
8 Arabia.

9 With the passage of JASTA, we clearly have the right
10 to assert our claim. Speaking for the committee, our committee
11 always had the same understanding and apparently there has been
12 a misunderstanding with the defendant.

13 As your Honor knows, the two complaints that were
14 filed 14 years ago were the Federal Insurance complaint and the
15 O'Neill complaint. The O'Neill complaint alleges a class
16 action, but of course there is no class that's been certified.
17 Those are the two cases that have been proceeding against Saudi
18 Arabia up to the Second Circuit, back to the district court, to
19 the Second Circuit. Those are the two cases that were remanded
20 for an amended complaint. Those are the two cases where
21 complaints had been filed and been litigated.

22 We always believed that the schedule, the June 1 date
23 and your Honor's orders referred to the two cases against Saudi
24 Arabia that have been before the Court and did not refer to new
25 cases that could be brought by thousands of people who have

1 never sued Saudi Arabia.

2 Now, as your Honor noted and Mr. Kellogg just
3 confirmed, the Ashton complaint is different from the complaint
4 filed by the original two cases, Federal Insurance, O'Neill,
5 and joined in by Burnett. And we have an absolute right,
6 having never sued Saudi Arabia, to present our case and present
7 it in the matter we see fit.

8 On the timing issue, I spoke with Michael Kellogg. We
9 tried to talk Friday. I think we wound up speaking Saturday.
10 But I said, we are filing our complaint. If you consent to it
11 being an amendment of Ashton, we can be, effectively, on the
12 same briefing schedule and take whatever time you would like to
13 study the complaint and decide if you want to consent. If you
14 don't consent, it's a new complaint, a standalone complaint, as
15 we have every right to bring, and then it's up to Saudi Arabia
16 to decide whether to accept service or require us to serve the
17 usual way. Obviously, if Saudi Arabia consents to it being an
18 amendment to the original Ashton complaint, we can be on the
19 same briefing schedule and there will be two briefs.

20 In terms of additional cases, the committee has agreed
21 that for all new cases, for anyone who wants to join in this
22 litigation and adopt a complaint, we are using the Federal
23 Insurance/O'Neill/Burnett complaint for everyone to sign onto.
24 So it's our expectation that as these new cases join, the Court
25 will have before it only two complaints down from the 20 or so

1 complaints that have been filed, and it's entirely up to Saudi
2 Arabia to decide whether to consent to being an amendment or
3 not, and we will act accordingly.

4 THE COURT: Why does Ashton need to have a standalone
5 complaint? What's unique about the facts of Ashton that are
6 not covered by the consolidated amended complaint? That seems
7 to work for thousands of other folks.

8 MR. KREINDLER: Your Honor, this is our first time to
9 present the case that we see fit in the way we want to present
10 it. I could detail a lot of differences between the two, but
11 our committee has been working together and discussing these,
12 and I don't know that it's the best thing for us to do to talk
13 about all the differences between the two complaints, but our
14 complaint has some fact allegations, not in the other, as the
15 other has some facts and items not in ours.

16 And including the people we have not filed for, for
17 the 5,000 people we represent, we have a right to state our
18 case the way we want to state it, and I don't believe that
19 there is any prejudice or any inefficiency in proceeding this
20 way. There will be two complaints. Everything we do from here
21 on out, as has been the case for 15 years, we are completely
22 unified on, discovery, court conferences. There isn't a gap
23 among any members of the plaintiffs' committee. We are acting
24 together.

25 But for thousands of people, family members of people

1 who were murdered who have never yet been able to voice their
2 allegations against Saudi Arabia, we have a right to present
3 our case the way we think best, and I am joining with my
4 colleagues in simplifying the procedure by urging that every
5 new plaintiff sign onto the Federal, O'Neill, and Burnett
6 complaint so that there are only two complaints.

7 THE COURT: I don't understand why what's good enough
8 for everybody else is not good enough for the Ashton
9 plaintiffs. If you're encouraging every other claimant or
10 plaintiff to sign on and to have their voice heard through this
11 consolidated amended complaint and, yet, your clients need to
12 have a separate voice, I don't mean to undermine their claims,
13 but we are talking about thousands and thousands and thousands
14 of people here, and we are trying to come up with something
15 that is sufficient.

16 What I'm struggling with is why the lawyers and the
17 Court should be required to review two separate complaints and
18 two separate motions and all that that undertakes when 98
19 percent of the plaintiffs are all in one complaint, why we need
20 to have a special carve-out for these other plaintiffs.

21 I'm not trying to devalue your sentiments that your
22 clients have the right to be heard, but that voice, I assume,
23 can be brought forward, and you are asking for every other
24 lawyer to have their client's voices heard through this
25 consolidated amended complaint that the Plaintiffs' Executive

1 Committee thinks is strong enough to states these claims.

2 What's so special about Ashton?

3 MR. KREINDLER: Let me say this. I believe that every
4 plaintiff has a right to start their case and present their
5 case the same way. Now, in my career I have never worked off a
6 master complaint and from every -- from Pan Am 103 to this
7 case, there have always been different complaints when a motion
8 is filed. It can either be one motion or separate motions.

9 The Ashton plaintiffs are not a spinoff. This is half
10 the death cases and a majority of the injury cases and the
11 complaints are different. There are facts that we thought
12 important to include that others didn't, and there are other
13 facts and components that others thought important to conclude.

14 THE COURT: What would you recommend that I do if 50
15 lawyers come in in the next month and say what you are saying
16 to me right now.

17 MR. KREINDLER: Here is my suggestion. Number one,
18 give this process a chance to play out. There is a certain
19 practical reality here. Now, 90 percent or a huge percentage,
20 80 percent of the death cases are filed. My prediction is, as
21 new people join -- and no one wants to be left on the
22 sideline -- my prediction is, a month from now, instead of
23 having 20 different complaints before the Court, we will be
24 down to two and I think that's a very solvable problem.

25 Over the next days or weeks Saudi Arabia can decide

whether or not to consent to ours being an amendment to the earlier Ashton complaint against other defendants and, if so, we can have the same briefing schedule. We believe that this does not upset the briefing schedule. Certainly if Saudi Arabia wants to consent to an amendment, and there will be no burden on the Court. When we get to the briefing, we are amenable to one brief to dismiss both actions or two briefs with an area of overlap.

But, either way, I believe you will soon have before you virtually all the plaintiffs in this case down to two complaints with some different facts and a different approach and a different presentation, without prejudice to any plaintiff's right to assert the most powerful claims that they feel exist in the way they think is appropriate. I don't foresee a problem with this at all.

Just as a footnote, what I wanted to say about the committee, we are on exactly the same page and this is how we were operating. We always understood what was happening was a briefing schedule for the remanded actions and other cases could shortly file their own complaints.

As it's turning out, and I have not seen the complaint that was filed today, but it's my understanding that it is identical or substantially the same as the Federal/O'Neill/Burnett complaint. So I think if you let this process run its course, we are going to be down to two

1 complaints and a very manageable schedule for the defendant to
2 answer or move, and we know it's going to be a motion, not an
3 answer.

4 THE COURT: Does the Plaintiffs' Executive Committee
5 recommend requiring any newly filed complaint containing an
6 attorney certification that the complaint largely or
7 substantially tracks the consolidated amended complaint?

8 MR. CARTER: Your Honor, we have been having some
9 conversations with the attorneys who are in the newly filed
10 actions and the one thing that I can report is that all
11 indications so far are that the folks that we have talked to in
12 the newly filed cases intend to adopt the consolidated amended
13 complaint for purposes of litigation, so we do expect that the
14 group of actions you identified in your order for purposes of
15 today's conference will be adopting the consolidated amended
16 complaint. We are awaiting final answers from a couple. I do
17 think Barrison, Addesso, Aguilar, Hodges, Desimone, Akin all
18 intend to adopt the consolidated amended complaint, and
19 hopefully I have not misspoken on any of those. I'm sure
20 counsel will advise.

21 I believe that the complaint that was filed today does
22 in fact track the consolidated amended complaint, and we are
23 going to be recommending to anyone who reaches out to us who is
24 a potential plaintiff that they file a complaint in the form of
25 the consolidated amended complaint. Certainly I am,

1 Mr. Goldman.

2 THE COURT: Can we come up with some sort of system so
3 that the Plaintiffs' Executive Committee can notify the Court?
4 This is one of many cases that I have on my docket and it would
5 be nice to have experts let me know whether or not I should
6 assume that a newly filed complaint is in fact an adoption of
7 the consolidated amended complaint.

8 MR. CARTER: Yes, your Honor. We had some
9 conversations downstairs about what the most effective
10 procedural advice would be to do that, whether it's a
11 short-form complaint that essentially plaintiffs in those cases
12 could come in and simply adopt and incorporate into their
13 complaints the consolidated amended complaint and take the
14 benefit of that, or whether it's some sort of stipulation to
15 that effect. We are having those conversations now. We think
16 we will have a firm proposal on that very shortly.

17 THE COURT: Good. I'm glad to hear that.

18 Mr. Kreindler, one other question before we move away
19 from Ashton.

20 From a judicial efficiency standpoint, which is one of
21 the considerations that I'm taking, why would the best course
22 of action not be to have Saudi Arabia move against the
23 consolidated amended complaint, let that motion be decided, and
24 then once that motion is decided, issue an order to show cause
25 as to why that decision that came out of that process shouldn't

1 apply to Ashton? Why is that not the most efficient way to
2 proceed?

3 MR. KREINDLER: I think a more efficient way to
4 proceed is to deal with all the briefing right away. If we
5 follow your Honor's recommendation, there will be a decision on
6 the motion. If the motion is denied, then we have a whole
7 separate round of us arguing that it has to be denied in our
8 case, too, even though it's different allegations.

9 Conversely, if the motion was granted, we would have a
10 whole separate briefing schedule where we are arguing that a
11 different result should apply in our case. So instead of doing
12 it in two phases, I think it's more efficient just to do it at
13 once. We will know sometime fairly soon whether we can be on
14 the same schedule because if there is a consent to either
15 accept service in a standalone case or to treat ours as an
16 amendment, there shouldn't be a problem for a motion to dismiss
17 both complaints being filed by June 1, and we are on the same
18 schedule.

19 I don't see a need to do it in two separate waves. I
20 think it's more efficient to do it all at one time.

21 MR. KELLOGG: Your Honor, the premise of
22 Mr. Kreindler's argument, and he said this several times, is
23 that they never filed suit before against the Kingdom of Saudi
24 Arabia and the Saudi High Commission. That is simply not
25 correct. I refer the Court to document 2891, which was filed

1 on the 15th of September in 2014. It is plaintiffs' motion to
2 file a consolidated amended pleading of facts in evidence as to
3 the Kingdom of Saudi Arabia and the Saudi High Commission. It
4 was in a proposed amended complaint after the initial remand
5 from the Second Circuit.

6 We opposed that amendment on two grounds. First, on
7 the grounds that there was a very limited purpose for the
8 Second Circuit remand and it was inappropriate for them to open
9 up the record with a great deal of new allegations; but,
10 second, we also argued that it was futile because it did not
11 correct the defects in the existing complaints.

12 Judge Daniels agreed with us on the latter point. He
13 did not reach the former. He agreed with us that it was
14 futile. He dismissed the complaint against us. And Ashton
15 plaintiffs were part of the appeal on that. They joined in the
16 document 2891. They signed the pleadings. They are listed as
17 participating in the proposed amended complaint. They
18 participated in the appeal. They are part of the remand. We
19 had every reason to expect during these back-and-forth letters
20 that they were part of that process that we were agreeing on as
21 well. For them now to have laid in the weeds during that and
22 come up with a new complaint imposes a substantial burden not
23 just on us, but also on the Court.

24 THE COURT: I guess I go back to my question to you
25 about remedy, which is tied into my question to you about the

1 statute of limitations. Whether it was fair or not for the
2 Ashton plaintiffs to file this separate complaint and whether
3 or not you expected it or I expected it, I'm not quite sure
4 that there is an appropriate remedy. I don't know. You said
5 dismiss the complaint. If the parties are allowed to file this
6 complaint up until 2019, I'm not really sure that that's the
7 appropriate remedy here.

8 MR. KELLOGG: Parties can file new complaints.
9 Parties were not in the proceeding before, but the Ashton
10 plaintiffs were part of the prior proceeding. Their complaint
11 was dismissed and they were part of the remand from the Second
12 Circuit, so they have to amend. And they have not given an
13 actual legitimate reason for why they did not amend as of March
14 1 if that's what they wanted to do.

15 MR. KREINDLER: Your Honor, I have got to say one
16 other thing because it makes no sense. The Ashton plaintiffs
17 never sued Saudi Arabia. We joined with our colleagues. The
18 committee speaks in one voice in 2014. But 2014 is a decade
19 after the statute of limitations has run. So it just isn't
20 right to create the impression that we ever sued Saudi Arabia
21 or forfeited our right to do so after JASTA because the
22 plaintiffs' committee speaks as one voice and we all support
23 one another in the relief sought, even if it doesn't apply to
24 some plaintiffs. Had we won in the Second Circuit, that would
25 not have affected the Ashton plaintiffs because we never have

1 sued Saudi Arabia.

2 What we are talking about is now, the first time since
3 the statute is gone, after JASTA we can sue. And to suggest
4 that we lose our right to sue Saudi Arabia the way we think it
5 should be done in our cases, because of a misunderstanding that
6 can be easily cured, is just not right.

7 THE COURT: I think I've heard enough on this
8 particular topic.

9 What I am going to do is ask both sides to send me a
10 letter in a week letting me know what their current position
11 is. It sounds like there may be some further discussions. I
12 would like to hear from both the Ashton plaintiffs and from
13 Saudi Arabia. And if the High Commission also wants to weigh
14 in, that's acceptable, and then I'll take all of that under
15 advisement.

16 Can I ask, is the lawyer for the Aguilar and other
17 related cases here?

18 Can I ask you to come into the well. I think we need
19 to have you by a microphone.

20 THE COURT: Can I get your name.

21 MR. NAPOLI: Paul Napoli from Napoli Skolnick.

22 THE COURT: I had some sort of housekeeping questions
23 for you. I understand that you filed four separate complaints
24 that I understand are largely identical and the representatives
25 of the Plaintiffs' Executive Committee seemed to suggest that

1 either that tracks the consolidated amended complaint or you
2 will be joining the consolidated amended complaint. As you can
3 tell from the latest colloquy, we want to have as few
4 complaints as possible here in order to streamline and manage
5 this case. Can you tell me a little bit about where things
6 stand on that issue.

7 MR. NAPOLI: Your Honor, we have been speaking over
8 the last several days with the executive committee trying to
9 work out a process by which we can adopt the complaint that the
10 majority has put forth. We think a simple solution would be a
11 notice of adoption or a short-form complaint by which if there
12 are any new cases that get filed, they can just automatically
13 adopt the pleadings as they exist. That way there will be one
14 briefing schedule and one set of briefs, which we will be
15 working to see if we can help the executive committee with
16 throughout the process.

17 THE COURT: That's what I was talking about with
18 Mr. Carter. Hopefully, the Plaintiffs' Executive Committee
19 will come up with a proposal for that. I think that resolves
20 my first problem, which is that we had four complaints that
21 were identical.

22 My second question for you, and this also may be
23 mooted if you join the consolidated amended complaint, is your
24 motion for leave to serve by way of publication. Should I
25 assume that that's mooted now if you are going to be moving

1 within the consolidated amended complaint?

2 MR. NAPOLI: Not exactly, your Honor. So the
3 consolidated complaint has just the one defendant, the Kingdom
4 of Saudi Arabia. There are the additional defendants that we
5 have sued as well. There are 14 counsel all together. We have
6 reached out to all of them. And the consensus so far, we have
7 spoken with half of them, that they are going to talk to their
8 clients to see if they will waive service and consent to
9 service so there will be no need for the motion. I would ask
10 that the Court give us a little time to continue those
11 conversations, and hopefully all defendants will agree to
12 accept service by consent, and then we can stipulate to the
13 withdrawal of the motion.

14 THE COURT: The way these motions are typically filed
15 is that a lawyer has made real efforts to identify somebody and
16 figure out a way to serve them and the motion needs to set
17 forth all of the ways in which you made those efforts. In this
18 case, as was reported by counsel, many of these defendants are
19 represented in this case. I think one of the defendants is
20 dead. It doesn't appear that a real effort was made to effect
21 service before that motion was filed.

22 I'm inclined to deny the motion. It's without
23 prejudice and you can make a new application if there are
24 certain defendants who refuse to accept service. And to those
25 defendants, counsel, who are here, I hope you will all work

1 together on this issue. And then if you want to make an
2 application for service by way of publication for a particular
3 defendant, you need to make a showing that you've really
4 searched and made real efforts to identify where that person is
5 and try to attempt service.

6 MR. NAPOLI: Sure. Fair enough, your Honor. And we
7 understand the standards that are involved in coming to the
8 most unusual request to serve by publication. This case, as
9 you know, has gone on for 15 years and I think at some point
10 the executive committee themselves reached a point where they
11 were unable to serve process and made a motion for publication.
12 So it's not that we didn't make efforts or intended to make
13 efforts; it's we knew those efforts were going to be futile.
14 That's why we brought the publication. I'm hopeful that we can
15 work out the service issues, but we understand your Honor.

16 THE COURT: I am going to deny the motion. It's
17 without prejudice and you can make an application on a
18 particular showing with a particular defendant.

19 MR. COTTREAU: Your Honor, if we could just clarify a
20 couple quick points. I appreciate the denial of the motion.

21 One is, my client is a publicly traded company in
22 Dubai. It's not as it's been characterized, a terrorist hiding
23 in any way. It is easy to be found. Having said that, I have
24 not received a call. I think it was represented that all
25 defendants have received calls yesterday or the day before. I

1 have not received any call to accept service.

2 But if we could have a court order, that would be very
3 useful in case there is any lack of clarity, either now under
4 existing law or as the law develops in the future, that an
5 acceptance of service by a defendant or a waiver of service by
6 a defendant will have no impact on that defendant's ability to
7 argue that this Court lacks personal jurisdiction.

8 MR. NAPOLI: Your Honor, we consent to that. I think
9 that's always the case. We would stipulate to that in our
10 waiver. To the extent that you can help us expedite getting
11 the waivers, great.

12 THE COURT: I'm happy to issue an order, if that would
13 make the process more streamlined, and ask that the defendants
14 get back to counsel within the next two weeks on their position
15 and that any waiver of service would not constitute a waiver of
16 any jurisdictional defenses.

17 MR. COTTREAU: Thank you, your Honor.

18 THE COURT: I think, Mr. Napoli, those were my only
19 questions for you. Thank you. I did want to call up one other
20 lawyer, if the lawyer for the newly filed Homer case is here.

21 Can you state your name for the record.

22 MR. PANTAZIS: I am Dennis Pantazis, and I represent
23 the Homer complaint that was filed today. That's 3476. It is
24 289 plaintiffs. They are family victims of decedents of 9/11.

25 Your Honor, I am part of the Plaintiffs' Executive

1 Committee, but previously we have been representing Havlish and
2 still do and Hoglan against Iran. We had not participated in
3 the Saudi cases up until this complaint. The purpose of this
4 complaint was to add those plaintiffs that were in the Hoglan
5 and Havlish case that were not part of the Saudi case. So we
6 contacted and worked with the executive committee and we were
7 instructed, and I think it was my interpretation as well, that
8 the consolidated complaint was only for the remand. Since
9 these people were not part of that, they would not be added to
10 the consolidated complaint. At least that's what we were
11 instructed.

12 THE COURT: Does the complaint track the consolidated
13 amended complaint?

14 MR. PANTAZIS: We worked with them. Our intent was to
15 be identical except for the parties to the consolidated
16 complaint.

17 THE COURT: One other housekeeping question. It
18 doesn't appear that you commenced this action as a separate
19 action, but that it's only been filed in the MDL case. Or have
20 you also --

21 MR. PANTAZIS: Only been filed in the MDL case.

22 THE COURT: I think, and maybe somebody here can help
23 me, but I think the practice has been to open a new case, get a
24 new civil docket number, and then it will be related to the MDL
25 case.

1 MR. PANTAZIS: We debated that, but based on the fact
2 that the Court wanted to have all the parties and all the
3 complaints we deemed today, and the fact that we would be
4 joining the consolidated complaint, we thought it would be
5 better to at least today to notify the Court by filing through
6 the MDL. If the Court directs us as you have, we will file a
7 separate case.

8 THE COURT: I will double-check to make sure, but I
9 think the correct protocol for newly filed cases is to file
10 them in both a new case under its own action and in the MDL
11 case.

12 MR. PANTAZIS: That's the way we normally file them.
13 We thought since there was a consolidated complaint and the
14 effort was to join it, we would file it just with this. We
15 will do it both ways.

16 THE COURT: Presumably, once we get something in place
17 from the Plaintiffs' Executive Committee on how we are going to
18 have people join that consolidated amended complaint, I take it
19 the Homer plaintiffs will file whatever that form is.

20 MR. PANTAZIS: Absolutely. Our purpose was to notify
21 the Court and the defendants and to track the consolidated
22 complaint.

23 THE COURT: Great. Thank you, sir.

24 Mr. Carter.

25 MR. CARTER: Your Honor, the Court's dialogue with

1 Mr. Napoli triggered an issue that I thought timely to bring up
2 at this point. There are claims against nonsovereign
3 defendants in, I believe, six of the cases that are now pending
4 in the MDL, six of the newer cases in the MDL. The four cases
5 by Mr. Napoli, a case captioned Lloyd's that my firm
6 represented, and a case on behalf of Beasley that Mr. Kreindler
7 represents.

8 The nonsovereign defendants who are named in those
9 cases and the Defendants' Executive Committee reached out to me
10 recently in the hopes of reaching an agreement on any
11 amendments of the claims in those cases against the
12 nonsovereign defendants, the timing for that so that we could
13 all be on the same page. We have got an agreement from
14 everyone who has those claims that any amendments as to the
15 nonsovereign defendants in those cases will be done within 30
16 days and then there is going to be a schedule proposed for
17 briefing those. We are hopeful, I think, again that there can
18 be couldn't consolidated briefing on all those actions in
19 relation to the motions to dismiss of those nonsovereign
20 defendants.

21 THE COURT: Let me say back to you what you just said
22 to me so I understand.

23 For these six cases and potentially others, since that
24 seems to be happening, with respect to the nonsovereign
25 defendants, there is an application being made to those

1 defendants now to amend those pleadings and then to set a
2 briefing schedule, which may or may not -- sounds like will not
3 coincide with the June 1 schedule that we already have in
4 place. Is that correct?

5 MR. CARTER: I think that's correct. I think the
6 proposed amendments would have to occur within the next 30
7 days, and then there is likely to be some divergence of opinion
8 on the part of the lawyers representing the nonsovereign
9 defendants who will be moving about the timing on their motions
10 to dismiss. Again, we are going to try to do it this in an
11 orderly way and hopefully through consolidated briefing in
12 those cases. I think the allegations in those cases as to the
13 nonsovereign defendants, I had not studied them in detail, but
14 I do think that they are harmonious enough for there to be
15 consolidated briefing in that setting.

16 THE COURT: They are also distinct enough or
17 distinguishable enough that there is no need to consolidate
18 that motion practice with the sovereign motion to dismiss. Is
19 that correct?

20 MR. CARTER: That's correct, your Honor. It's
21 completely different issues, and I just wanted to clarify one
22 point because some of us may have misheard. I know that the
23 Plaintiffs' Executive Committee members who have signed under
24 the consolidated amended complaint were of the understanding
25 that should briefing go forward as to the Kingdom's motion to

1 dismiss as to both the consolidated amended complaint and the
2 Ashton complaint, there would be separate briefing as to those
3 two issues. But it is not an issue, admittedly, that we have
4 spoken to Mr. Kellogg about at this point.

5 THE COURT: Thank you.

6 Mr. Kreindler, you were speaking briefly about the
7 role of the Plaintiffs' Executive Committee and I cut you off.
8 Is there anything else that you want to educate me about as far
9 as how you see the committee working on a going-forward basis?

10 MR. KREINDLER: No, your Honor. I think I've covered
11 it. I just wanted to stress that we are always exactly one
12 team doing the same thing. There is no issues in the
13 committee, whether it was the appeal in 2014 or how we are
14 proceeding now. I just wanted to assure you that we are
15 exactly on the same page and uniform in our approach and we
16 will do everything humanly possible to coordinate with all
17 other counsel so we can simplify briefing and filings in all
18 related matters.

19 MR. CARTER: Your Honor, a related data point. The
20 Plaintiffs' Executive Committee structure was established
21 through a case management order issued many, many years ago, I
22 think in 2004. It's case management order No. 3 in the MDL
23 proceeding. I believe the docket No. is 248. One of the
24 reasons I can't tell you for certainty is because I think it
25 actually preceded the implementation of the ECF system and, as

1 a consequence, I'm reading off of a handwritten notation, but
2 in terms of assessing what the duties, obligations, and powers
3 of the executive committees are in the litigation, those are
4 set forth in that case management order.

5 THE COURT: Is there any reason why we might want to
6 have a case management order No. 4? Do you think there is a
7 need at this stage to reaffirm the role of the Plaintiffs'
8 Executive Committee or put anything on the record that's more
9 current?

10 MR. CARTER: I don't know that there is anything that
11 we see presently about the structure and powers of the
12 executive committee that needs to be changed. We would, by the
13 way, if I'm correct, be on case management order No. 7. There
14 were several after case management order No. 3. Thank you,
15 your Honor.

16 THE COURT: That's a good segue into a question I have
17 about discovery.

18 MR. COTTREAU: Your Honor, I don't mean to interrupt
19 or break your train of thought. I understand that a lot of
20 these new cases have not been formally part of the MDL and they
21 are simply showing on the docket as related cases. And maybe
22 it would be appropriate for your Honor to order that the case
23 management orders in place in this case apply also to the
24 related cases as well as to the cases that have been
25 consolidated formally under the MDL.

1 THE COURT: Because you think those cases aren't
2 otherwise covered by the existing orders?

3 MR. COTTREAU: As I understand it, they have been
4 shown and docketed as being related cases and transferred to
5 you and to Judge Daniels. But I think there may be an issue as
6 to whether they are formally part of the MDL.

7 THE COURT: I thought that that had been resolved, but
8 I will look and see if that is in fact the case.

9 MR. PANTAZIS: One quick question. Based on that, the
10 way I have participated in MDLs before on consolidated cases,
11 if the Plaintiffs' Executive Committee has a consolidated
12 complaint, plaintiffs can join that consolidated complaint and,
13 therefore, it would be under the order and would not have to
14 file separate cases and that might clean up some of the issues
15 the Court has been discussing. Is that a possibility under
16 your organizational plan?

17 THE COURT: I think it is.

18 MR. PANTAZIS: Because it would be an easier fix from
19 our perspective to simply join in the consolidated complaint.

20 THE COURT: Sure. And I think that is my desire as
21 well. What I just need to reflect on is whether or not there
22 should still be sort of a pin in a new civil docket number that
23 acknowledges that case.

24 I think what I am going to do is, I am going to ask
25 the Plaintiffs' Executive Committee to send a letter to me in

1 the next week. And what I would like to hear from you all is
2 on some of these topics we have been discussing: One, whether
3 or not there should be -- what's your recommendation for having
4 new parties join the consolidated amended complaint. Should
5 there be a notice of adoption or some sort of shell complaint
6 form? And, relatedly, whether or not in the Plaintiffs'
7 Executive Committee, whether or not your recommendation is to
8 have new complaints opened as a new civil and related or not.

9 I'd like to hear from you all what you think, from
10 your experience, is the best way to proceed. And maybe if you
11 could also address the concern that Mr. Cottreau just raised
12 about making sure that related cases are truly part of the MDL
13 and if an appropriate order needs to be put in place, if you
14 could propose that order. I'd like that letter from the
15 Plaintiffs' Executive Committee within a week.

16 Separately I'd like a letter from -- these can be
17 separate letters -- from the Saudi Arabia and the Saudi High
18 Commissioner and the Ashton parties as to what is the current
19 position on the status of the complaint. If there is
20 agreement, that's terrific. If there is not, I will hear from
21 both of you as to what you think is the appropriate remedy and
22 issue my rulings. If I can get a letter within a week on the
23 Ashton issues.

24 Then I am going to give the parties two weeks to send
25 me a letter on the issue related to the new cases with the

1 nonsovereign defendants and where we are on that case. And I
2 think in that letter I would like to also hear from Mr. Napoli
3 on the issue of service and where we are on that particular
4 issue, and then we can also discuss where things stand with
5 respect to the complaint, whether there will be an amended
6 complaint that's going to be filed; if so, a proposed schedule
7 for that amended complaint to be filed and thereafter a
8 proposed schedule for any motions that are anticipated.

9 MR. SALERNO: Peter Salerno of Salerno & Rothstein. I
10 represent Yassin Kadi. Mr. Kadi is a nonsovereign defendant in
11 all the cases. He is in the new cases as a defendant, but has
12 also been in the old cases. He made a motion to dismiss many
13 years ago that was granted, but the Second Circuit remanded the
14 claims against him and others, but I am not sure they are in
15 these cases, remanded the claims against him for personal
16 jurisdiction discovery. My client has been in that personal
17 jurisdiction discovery producing documents since late 2013,
18 within months after the remand.

19 With that history, the concept of answering or moving
20 with respect to any of the new complaints strikes one as an
21 exercise in futility since we know that the Second Circuit has
22 already said that the claims in the old complaints, at least,
23 need to be elucidated by discovery, so presumably if we move to
24 dismiss and won again, the same thing would happen and that
25 would certainly be wasteful. If we lost, we would be in the

1 same position that we are with the old complaints. I'm afraid
 2 that's a long-winded way of saying we think that the new cases
 3 should be on the same track as the old one. We are stuck in
 4 the case anyway. We can't probably reasonably expect this
 5 Court to grant a motion to dismiss after looking at the Second
 6 Circuit's decision in the old cases. So that's a
 7 consideration.

8 THE COURT: Where are you now? You're engaged in
 9 discovery over personal jurisdiction?

10 MR. SALERNO: We are about to finish our document
 11 production. We have been in document production discovery
 12 since the Second Circuit remand directed that this discovery be
 13 judicially supervised. The next steps, I guess, are up to a
 14 combination of ourselves and the other remanded defendants.

15 THE COURT: How many of you are there?

16 MR. SALERNO: I honestly don't know, your Honor.
 17 Mr. Kabat, I know, represents some of them. But nobody else
 18 having stood up, I suspect I'm the only one physically here
 19 representing one of them.

20 THE COURT: I'm seeing hands behind you.

21 MR. KRY: Robert Kry with Molo Lamken. We represent
 22 Dallah Avco. We were in front of your Honor recently on the
 23 motion to compel. But procedurally we are in the same
 24 situation as Kadi.

25 THE COURT: This is supposed to be judicially

1 supervised discovery, as you represent to me. So it seems like
2 I need to be supervising better than I am.

3 MR. SALERNO: We have no complaints on that score,
4 your Honor, I assure you.

5 The fact of the matter is, under Judge Maas we had
6 been working through the process of producing documents. There
7 are other defendants producing documents that are not remanded
8 defendants, but they are in the case. I think we all expect
9 that process to be -- each defendant is in a different
10 situation. I can't speak for them. We are about to finish our
11 document production as we see it, I think, within a matter of
12 days, if not a week or so.

13 THE COURT: I have a note in my notes here that
14 document discovery is to end March 31 and this must be that
15 document discovery that we are referring to.

16 MR. SALERNO: It is, your Honor.

17 THE COURT: And that the Plaintiffs' Executive
18 Committee suggested an April 21 status letter on whether any
19 motions to compel will be filed.

20 MR. SALERNO: Yes. I have to say, our final
21 production is going to be large. We had been doing it on a
22 rolling basis and finally discovered that we couldn't stop and
23 do production and still get it done, so we decided to keep
24 working on coding documents, the ultimate of which, the last
25 one is going to be large. I doubt if the plaintiffs will be in

1 a position to say whether they have a motion to compel in three
2 weeks, but that's up to them.

3 In any event, we expect to meet that deadline
4 actually, yes.

5 MR. COTTREAU: Your Honor, if we could just address
6 the deadline issue. Sean Carter and Alan Kabat and I have all
7 been speaking, and I hope on behalf of the defendants who are
8 currently in document discovery and who are subject to your
9 fall order last fall of a March 31 deadline for document
10 discovery.

11 I think we have agreement between Mr. Carter and
12 myself and Mr. Kabat, with your consent, to extend that
13 deadline to June 16, if we could. I think almost all of the
14 defendants need an additional extension, maybe with one or two
15 exceptions, to complete document discovery and some of that is
16 because we are still working out trying to work through some
17 issues with the plaintiffs.

18 THE COURT: Mr. Carter, yes.

19 MR. CARTER: Your Honor, yes. The defendants
20 approached us recently and requested an extension to June 16,
21 and we are not opposing that extension. There is an issue that
22 one of the defendants in discovery, the World Assembly of
23 Muslim Youth, or WAMY, has indicated that it expects to need
24 much longer to complete its production potentially until
25 September, some time in September. That struck the executive

1 committee as quite a long period of time for completion of the
2 productions. The letter advising us of the proposed new date
3 didn't provide much detail about why that length of an
4 extension would be necessary.

5 I had a brief conversation with Mr. Mohammedi, who
6 represents WAMY, as we came into court today and suggested that
7 it would be beneficial for us to hear from him during today's
8 hearing so your Honor can consider what kind of a deadline for
9 WAMY's production would be appropriate.

10 MR. MOHAMMEDI: Yes, your Honor. My name is Omar
11 Mohammedi representing WAMY International.

12 We have quite a large number of documents we have to
13 go through. So far we have produced over 700,000 pages of
14 documents, and we have been producing the supplemental
15 documents from April 2015 every four weeks, three weeks,
16 average of 35,000 pages of documents. It's impossible for us
17 to complete that discovery by June 15. We are doing everything
18 we can. Our clients, they are doing their own due diligence.
19 They are looking for documents. They are finding more
20 documents. We are going through all those documents. 95
21 percent of those documents are in Arabic. Some of them are in
22 different languages. Your Honor, we are doing our best to get
23 this discovery done. And we think that September 30 will be
24 the best date for us to complete this discovery.

25 THE COURT: Thank you.

1 MR. MOHAMMEDI: Thank you.

2 MR. CARTER: Your Honor, sorry. There was one issue I
3 neglected in relation to the executive committee's consent to
4 the extension of the discovery deadline to June 16. We have
5 communicated to the defendants that while we are agreeing to
6 the extension to that date, we expect that the productions to
7 be rolling to the extent possible so that we don't receive a
8 massive portfolio of documents all on June 16, and my
9 understanding is that that's how they intend to proceed.

10 THE COURT: With respect to those defendants who
11 believe they can complete their discovery by June 16, what do
12 you think would be an appropriate time for you to file a status
13 letter with the Court notifying me whether or not you
14 anticipate filing any motions to compel?

15 MR. CARTER: The difficulty that I think was suggested
16 in some of the defendant's statements is that we appear to be
17 looking at potentially hundreds of thousands of documents being
18 served between now and June 16, mostly in Arabic. So without
19 the benefit of an opportunity to assess what the productions
20 look like and make a determination how long it's going to take
21 us to get through them, it's difficult to say. We can propose
22 to send a letter stating our views based on a 30-day
23 preliminary review sort of keep to something on the books on
24 that point.

25 THE COURT: I am going to grant WAMY's application to

1 complete its documents on September 30 and that's contingent
2 upon continuing a rolling production. And with respect to the
3 other nonsovereign defendants who are engaged in this personal
4 jurisdiction discovery, I'll extend the deadline to June 16 as
5 requested. But I do want the parties to engage in rolling
6 production.

7 MR. COTTREAU: Your Honor, just to clarify, we are in
8 merits discovery and some of the other defendants are in merits
9 discovery as well. I think there is a class of defendants in
10 personal jurisdiction document discovery and a class of
11 defendants that are in merits document discovery as well.

12 THE COURT: All of those categories will be completed
13 by June 16. And as Mr. Carter said, I expect that to be a
14 rolling production.

15 Why don't we set a status letter of July 31 to let me
16 know where things stand with respect to those documents and
17 whether or not at that time the Plaintiffs' Executive Committee
18 thinks that it's likely to need to file a motion to compel or
19 whether or not they need some more time to review and to give
20 me a sense of why that is.

21 I think that that addresses all of the issues that I
22 had on my agenda. Is there anything else from anyone they
23 wanted to raise at this time?

24 I take it that with respect to the June 1 deadline for
25 the motion, that's still on target with respect to the

1 consolidated amended complaint. There is just this open
2 question about what to do about Ashton.

3 MR. KELLOGG: Your Honor, I understood that to be an
4 issue that we would work out with plaintiffs' counsel. If we
5 are going to be responding to both complaints
6 contemporaneously, we may want additional time.

7 THE COURT: That's fine. You'll put that all in the
8 letter you will send next week.

9 Anything further from anyone? Wonderful. Thank you
10 very much, everybody.

11 o0o